

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

BERNARDO LEE TIGNOR, )  
Petitioner, )  
v ) Civil Action No. 3:09cv291-WHA  
UNITED STATES OF AMERICA, ) (WO)  
Respondent. )

## ORDER

Upon review of the pleadings filed in this action, the court deems it appropriate to ORDER counsel for the petitioner to file, on or before July 13, 2009, a memorandum in support of the petitioner's § 2255 motion addressing the following issues:

1. Whether, in light of *Begay v. United States*, 553 U.S. \_\_\_, 128 S.Ct. 1581 (2008), decided on April 16, 2008, the petitioner's prior conviction for felony DUI in Alabama continues to be classified as a violent felony under 18 U.S.C. § 924(e)(2)(B)?
2. Whether, if the petitioner's prior felony DUI conviction is no longer classified as a violent felony under § 924(e)(2)(B), the declassification should be applied retroactively in this action under 28 U.S.C. § 2255?
3. Whether, if the declassification is applied retroactively, the

petitioner's motion is time-barred under the provisions of 28 U.S.C. § 2255 or otherwise subject to the doctrine of procedural default?

4. Whether the "actual innocence" doctrine applies within the context of challenging a prior conviction used to classify a defendant as an armed career criminal?

Done this 28<sup>th</sup> day of May, 2009.

/s/Wallace Capel, Jr.  
WALLACE CAPEL, JR.  
UNITED STATES MAGISTRATE JUDGE